

**Supreme Court
State of North Carolina
Resident Chambers**

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Senator Peter S. Brunstetter
Chairman, Senate Judiciary I Committee
16 W. Jones Street, Room 2022
Raleigh, NC 27601-2808

RE: The Unconstitutionality of Senate Bill 33

Dear Senator Brunstetter:

After receiving a copy of Chief Justice I. Beverly Lake's well-written letter, I thought it proper and necessary for me to submit a letter to you as well indicating both my approval of Chief Justice Lake's analysis and my belief that Senate Bill 33 as currently written is unconstitutional as to the proposed cap on noneconomic damages.

I was the authoring justice for a unanimous Supreme Court in *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 176, 594 S.E.2d, 1, 12 (2004). In *Rhyne*, the Court reaffirmed the principle from *Osborn v. Leach*, 135 N.C. 628, 47 S.E.2d 811 (1904), that compensatory damages, including noneconomic damages in tort claims, are a property right. Accordingly, those rights cannot be deprived without due process of law, U.S. Const. Amend. 14 and N.C. Const. Art. I, § 19, and additionally, they are the type of claims that the Constitution of North Carolina gives our citizens the right to have a jury decision as to amount. N.C. Const. Art. I, § 25.

It has always been the case in a civilization which is based upon ordered liberty that a person wronged by the actions of another would be able to recover damages so as to make that person whole. In the Old Testament book of Exodus (written in the 15th Century B.C.), Moses detailed how if a man opened a pit and another's animal fell into the pit and died, restitution was to be made. See Exodus 21:33-34. Even the famous Old Testament maxim, "an eye for an eye, and a tooth for a tooth," see Leviticus 24:19-20, was a statement concerning the damages one may receive from another because of a wrong done. These principles were imported into the formation of medical malpractice actions in England over 400 years before the birth of our country, when a court there articulated the availability of a claim in negligence against a physician. See C. Joseph Stetler, *The History of Reported Medical Professional Liability Cases*, 30 Temp. L. Q. 366, 367 (1957). The common law of England, which in many cases has its roots in the Biblical law, was the foundation of the law in this country. This was recognized by our Founding Fathers in the Seventh Amendment to the United States Constitution, which

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states: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Moreover, the drafters of the Constitution of North Carolina understood the importance of a full remedy at law and thus provided "All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay." N.C. Const. Art. I, §18. In interpreting this section, it cannot be forgotten that the common law itself was incorporated specifically into the law of North Carolina. *See* N.C.G.S. § 4-1 (2009).

The right to a trial by a jury of one's peers was one of the explicitly mentioned reasons for declaring independence from England, as the King had made it a practice of "depriving us in many cases, of the benefits of trial by jury." Declaration of Independence, ¶ 20 (1776). The drafters of the Constitution of North Carolina provided that, "In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable." N.C. Const., Art. I, § 25. Senate Bill 33 threatens that very right called "one of the best securities of the rights of the people." There are many options open to the legislature to address any perceived issues in the field of medical malpractice law. Depriving the citizens of the Old North State their "sacred and inviolable" constitutional right to a civil jury trial is not one of them.

In conclusion, I ask you to remember the importance of the right to a civil jury and the right our citizens have to full compensation when they have been injured through the negligent acts of another. We all have a duty to uphold the Constitution, and it is on this basis that I ask you to oppose Senate Bill 33.

With warm regards, I remain

Sincerely,



Edward Thomas Brady

cc: Members of the Senate

Chief Justice I. Beverly Lake, Jr.